To realize how inconsistent a decision of this nature is with the strict common law doctrines it must be borne in mind that the condition was expressly precedent, that it was not fulfilled, and that no definite excuse for its breach was found by the jury. In theory the plaintiff to recover must show that the defendant prevented the carrying out of the contract. The American courts in general, moved by the extreme rigor of express conditions, have modified the law to permit recovery in cases of fraud or gross mistake. But it is conceived that the true rule is that an honest refusal of the architect to give the certificate, no matter how mistaken he may be, debars the builder from suing on the contract. *Bradner* v. *Roffsel*, 57 N. J. Law 412. This rule, while mitigating the harshness of the English doctrine, is yet within the fair meaning of the contract. To make it more lenient is virtually to substitute a jury for the architect. To make it more strict is to acknowledge that the latter need not give an honest judgment. Each of these results is equally undesirable, and the decision of the principal case, tending as it does to enlarge the scope of the New York doctrine, is to be regretted.

INJUNCTIONS AGAINST PICKETING. — The ill feeling and prejudice engendered by strikes make the subject one requiring peculiar delicacy of treatment and one, moreover, of great popular interest. The system commonly known as "picketing" almost always accompanies a strike. Its purpose generally is not only to gain information but to prevent others from entering the employ of the company or person against whom the strike is directed. Whether it is tortious always, or only when it assumes particular aspects, has been the subject of considerable difference of opinion. It is apparently conceded that the use of threats or violence will be enjoined. *Murdock, Kerr & Co.* v. *Walker*, 152 Pa. St. 595. Some authorities refuse to go beyond this. *Krebs* v. *Rosenstein*, 66 N. Y. Supp. 42. Others extend the injunction to picketing in general. *Vegelahn* v. *Guntner*, 167 Mass. 92. In a recent case in Ohio an injunction was granted against all picketing. *Dayton, etc., Co.* v. *Metal Polishers, etc., Union*, 11 Dec. (Ohio) 643.

Perhaps the most satisfactory way to treat a subject of this sort is to adopt the view of Mr. Chief Justice Holmes that the intentional infliction of damage is *prima facie* actionable. 8 HARV. L. REV. 1. This would of course include intentional interference with another's business. Obviously, such interference is actionable if it is accomplished by a direct tort against his person or property. The general rule is that it is also actionable if accomplished by inducing a third person to break a contract with him. *Lumley* v. *Gye*, 2 E. & B. 216; *Jones* v. *Stanly*, 76 N. C. 355. Although no actual tortious methods are used, interference is still actionable *prima facie*. In other words, it is actionable unless there is some justification. The ordinary pursuit of business or competition in trade furnishes a justification, much as the right of a man to use his real estate as he pleases furnishes a justification for the intentional infliction of damage by such means as "spite fences." *Letts* v. *Kessler*, 54 Oh. St. 73. See *Mogul S. S. Co.* v. *McGregor, Gow & Co.*, 23 Q. B. D. 598; L. R. [1892] A. C. 25. It would seem that ordinarily the competition between employer and employee, and among employees themselves, which is just as real as that between business interests, should furnish a justification.

Holmes, J., dissenting, in *Vegelahn* v. *Guntner*, 167 Mass. 92, 104. Of course these justifications, while they excuse the infliction of some kinds of intentional damage, cannot excuse all. For example, they would not excuse direct torts against the person or property of the rival, nor preventing others from dealing with him by the use of violence or other means tortious as against them. See *Tarleton* v. *M'Gawley*, Peake 270.

To apply these principles to the subject in hand, it would seem that theoretically perfectly peaceful picketing would be justifiable. Such picketing is conceivable; but, as a practical matter, picketing generally is not, and from the nature of the circumstances cannot be, perfectly peaceful. The very presence of a picket usually contains a threat of violence. It is *per se* a tortious act as regards the prospective employees — an assault often accompanied by a battery. Therefore it should be actionable where there has been any damage to the prospective employer.

The ground of equity jurisdiction is clear. Irreparable damage is threatened, and there is a continuing injury, so that resort to the legal remedy would result in a multiplicity of suits. *Barr* v. *Essex Trades Council*, 53 N. J. Eq. 101, 126. It would be inadvisable to divide up the injunction so as to prohibit tortious actions and permit peaceful picketing on account of the difficulty which has been suggested of separating one from the other. Since, however, the granting of the injunction is largely in the discretion of the court, there would seem to be no reason why the court should not first look at the circumstances, and the general progress of the strike. If the strikers in all their dealings have been so fair and conciliatory that it is apparent that a picket established by them would be peaceful and friendly, though such a state of affairs may be rare, then the injunction might well be refused altogether. Otherwise the injunction should be granted.

DAMAGES FOR TESTAMENTARY LIBEL. — The liability of a decedent's estate for libellous matter inserted by the decedent in his will is a subject which seems never to have attracted the attention of legal authors nor to have hitherto received adjudication. A probate court of Pennsylvania, however, has recently been called upon to determine this novel question. *In re Gallagher*, 49 Pitts. L. J. 161. The petitioner against the estate claimed damages for a libel upon him in the testator's will, the publication of the libel being by probate of the will. The court, after determining that the maxim — *actio personalis moritur cum persona* — has no literal application, is led to allow the action by a consideration of the great injury that the petitioner (an attorney) will suffer in his professional character by an imputation thus perpetuated in a public record. One's sympathy is strongly roused in behalf of the libelled claimant. Nevertheless it is impossible on any established theory of the law to support the decision, desirable as it is in its result.

If the libel had been published by the testator to the witnesses, for example, a cause of action would have arisen against him. But at common law this would have abated at his death. *Walters* v. *Nettleton*, 5 Cush. (Mass.) 544. And the statutory modifications of the old rule of abatement do not, except in a very few states, apply to the action of libel. See 21 CYC. PL. & PR. 349. But the publication complained of is